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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 JUNMIN SHEN, YUZHU WANG, ,

4 Plaintiffs, New York, N.Y.

5 v. 16 Civ. 2015 (RWL)

6 DAN QING LIU, *et al.*,

7 Defendants.

8 -----x

9 April 19, 2018
10 10:00 a.m.

11 Before:

12 HON. ROBERT W. LEHRBURGER,

13 U.S. Magistrate Judge

14 APPEARANCES

15 TROY LAW PLLC

Attorneys for Plaintiffs

16 BY: JOHN TROY

17 LAW OFFICE OF BRIAN FREDERICKS P.C.

Attorneys for Defendants

18 BY: BRIAN P. FREDERICKS

19 ALSO PRESENT:

Arthur Kwok, Interpreter (Mandarin)

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(Case called)

THE LAW CLERK: Counsel, please state your name for the record.

MR. TROY: Good morning, your Honor.

This is John Troy for plaintiffs, Mr. Wang and Mr. Shen. Thank you.

THE COURT: Thank you.

MR. FREDERICKS: Your Honor, Brian Fredericks for defendants.

THE COURT: Thank you. You may all be seated.

Before we get going, I just had a couple of things I wanted to address and I just want to confirm.

The case that is being tried today is with respect to the two individual plaintiffs. There is no class certification and there is no collective action.

Am I correct?

MR. TROY: Yes, your Honor.

THE COURT: OK.

Secondly, I had mentioned yesterday that we would go to 4:30 today. I actually have a proceeding at 4 o'clock, so we are going to adjourn today at 3:45.

If we need the full day until 4:30 tomorrow, we will use it, but I am hopeful that will not be necessary.

I understand our interpreter is here?

THE INTERPRETER: Yes, Judge.

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Opening - Mr. Troy

1 THE COURT: OK. I need to swear you in.

2 Why don't you come forward.

3 We don't have the headphones set up, I guess. OK.

4 All right. Can you raise your right hand, please.

5 (Interpreter sworn)

6 THE COURT: Are you a certified translator?

7 THE INTERPRETER: Certified by OCA.

8 THE COURT: OK. All right.

9 Thank you.

10 THE INTERPRETER: Thank you.

11 THE COURT: Where do you plan on positioning yourself
12 for the translation?

13 THE INTERPRETER: For the witness I will be over
14 there.

15 THE COURT: Are there any matters to address before we
16 actually start from either side?

17 MR. TROY: Not from the plaintiff, your Honor.

18 THE COURT: OK.

19 MR. FREDERICKS: No, your Honor.

20 THE COURT: All right. Well, let's go.

21 As I said, I was going to offer you the opportunity
22 for a very short opening statement of some sort. So please
23 proceed.

24 MR. TROY: Your Honor, this is a traditional FLSA
25 case. Our two clients, two plaintiffs, they are the full-time

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Opening - Mr. Troy

1 deliverymen. They work six days per week. We are going to
2 prove they worked more than 40 hours per week. They did not
3 get the minimum wage paid. They did not get overtime. They
4 are paid monthly. One is \$1100; another one is \$1200 and later
5 on changed to \$1300.

6 If they worked more than ten hours, they did not get
7 spread of hours, according to New York Labor Law.

8 They have to use their money to purchase the
9 E-bicycles. They pay the money. They pay to purchase for the
10 benefit of the employer. They have to pay maintenance. They
11 had to change the battery. The battery always has a life span
12 of about six months.

13 That's about the working conditions for them.

14 When they get hired, they never get pay notice to talk
15 about how much they are going to get paid if they work less
16 than 40 hours; if more than 40 hours, how much they are going
17 to get paid. They never got this kind of notice.

18 Of course, they did not get the English version. Of
19 course, they did not get their primary-language version,
20 Chinese.

21 When every month they got paid, they get paid monthly,
22 but they never get pay stubs. I believe both of them are
23 violations of New York Labor Law.

24 The defendants, the Fresco Tortillas, it's a
25 restaurant. Everybody knows the restaurant involves a lot of

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Opening - Mr. Troy

1 cash.

2 The employer paid almost everyone every employee in
3 cash so they can downsize their annual revenue. We are going
4 to prove the tax return of the corporation is not worth
5 trusting. And I believe that regarding to the annual revenue.

6 Regarding to the interstate commerce, the restaurant
7 used a lot of drinks like Coke, like Sprite, like MSG, like
8 avocado. They are not produced in New York State.

9 Our two plaintiffs, they are the deliverymen. Even if
10 you call them deliverymen, actually, part of their job function
11 is as a cashier.

12 Why? Because they get a delivery order, they have to
13 check how much is the order, because they are going to collect
14 the money from the customers when they deliver it.

15 Not only that way, they are concerned about their
16 tips. So they have to collect the right purchase money because
17 he has to submit to the employer at the same time, when he gets
18 back to the restaurant or maybe at the end of the day. If for
19 whatever reason they did not collect the right money, they are
20 going to put their money on it, so they are really concerned
21 about the purchasing price.

22 The restaurant always has three kinds of business.

23 One, we are talking about the delivery.

24 The second one we are talking about eat-in, the people
25 come to the restaurant, they eat in over there.

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Opening - Mr. Fredericks

1 The third one is maybe you call pickup or maybe
2 takeout. Somebody they make an order, and then they come to
3 pick it up or they come to take it home. I believe the
4 restaurant has those kinds of practices.

5 In our case today, we are going to prove, you know,
6 how many orders are delivered every day, and through personal
7 experience and observation how many people or how many orders
8 come to the restaurant to eat in and how many orders, basically
9 come to pick up from the restaurant.

10 So we are going to prove the restaurant generated more
11 than \$500,000, well more than \$500,000 a year.

12 And I believe that is the case we have today.

13 Thank you, your Honor.

14 THE COURT: Thank you very much, Mr. Troy.

15 I will hear from defense counsel.

16 MR. FREDERICKS: Thank you, your Honor.

17 Your Honor, very briefly, there's one central issue
18 that can quickly dispose of this case. The corporate defendant
19 is not an enterprise under the FLSA because their gross sales
20 do not approach anywhere near \$500,000 per year.

21 Plaintiffs will lead you, lead the Court to believe
22 otherwise by providing self-serving and also incredible
23 statements. But these statements are not evidence. The
24 defendants, on the other hand, have produced tax returns along
25 with their bank statements, showing, again, that their gross

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Wang - direct

1 annual sales do not approach \$500,000 per year, not anywhere
2 close.

3 Accordingly, plaintiffs cannot meet their burden of
4 establishing jurisdictional prerequisite that defendants are an
5 employer under the FLSA.

6 Defendants respectfully request that the Court not
7 reward bad faith litigation that is a tremendous waste of
8 judicial resources in the federal court system and decline to
9 exercise supplemental jurisdiction in this case.

10 Thank you, your Honor.

11 THE COURT: OK.

12 You may call your first witness, Mr. Troy.

13 MR. TROY: Your Honor, I call Mr. Wang, my first
14 witness.

15 YUZHU WANG,

16 called as a witness by the Plaintiffs,

17 having been duly sworn, testified as follows:

18 (Through interpreter)

19 DIRECT EXAMINATION

20 BY MR. TROY:

21 MR. TROY: Your Honor, may I approach?

22 THE COURT: Yes.

23 MR. TROY: Thank you. Let's get started.

24 BY MR. TROY:

25 Q. Mr. Wang, would you like to tell the Court, what is your

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Wang - direct

1 full name.

2 A. Wang Yuzhu.

3 Q. Where do you live right now?

4 A. Flushing, Maple Avenue, 134-25.

5 Q. OK. Do you know there is a restaurant named Fresco
6 Tortillas?

7 A. That's right. I work there.

8 Q. How do you know the restaurant Fresco Tortillas?

9 A. Well, I used to work at 58th Street at a place called Jago,
10 and the boss lady, there's a menu that they use over there, and
11 she bought the phone number there, and I knew the boss that
12 bought the --

13 Q. Lady boss?

14 A. -- the number, phone number.

15 MR. TROY: I believe he's talking about lady boss, not
16 the boss. OK.

17 A. OK. So, initially, the one that I knew was the male boss,
18 and then I left my phone number there. And I went somewhere to
19 work, and then they needed some help so I came back to help
20 part-time.

21 Q. When you start to, came to help part-time?

22 A. August 2012.

23 Q. How much time you just came to help for part-time?

24 A. Well, since August 2012, when I came to work, it wasn't
25 part-time. It was full time.

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Wang - direct

1 Q. OK. What do you mean full time?

2 A. Full time means 12 hours of work per day.

3 Q. How many days did you work per week?

4 A. Six days. Six days.

5 Q. What is your days off?

6 A. I am off on Sundays.

7 Q. OK. You are talking about you work 12 hours a day. What
8 is your start time to work?

9 A. Well, they open at 10:30, and we arrive at 11.

10 Q. OK. Every day? Every working day?

11 A. Yes, basically arrived at 11.

12 Q. OK. When were you done with job every working day?

13 A. Well, they always closed the door down at 10:30. However,
14 at a minimum every day we haven't left before 11 yet.

15 Q. OK. You are talking about the restaurant store hours is
16 from 10:30 in the morning and 10:30 at night. Am I right?

17 A. Correct.

18 Q. OK. After 10:30, what is the restaurant operation why you
19 cannot go home by 11?

20 A. Well, at 10:30 -- Jessica would leave at 10:30. However,
21 the boss would take up the phone after 10:30, and I continued
22 to make deliveries. So if I go out 10:30 to make a delivery,
23 there's no way I come back before 11.

24 Q. OK. Let's go back. After you know the boss at the closing
25 restaurant, the boss bought the telephone number, how do you

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Wang - direct

1 come to the job? Who invited you to come to the job?

2 A. Well, I used to work at 23rd Street, Seventh Avenue, but
3 the restaurant closed down and they even -- there was a new
4 building there. And then I work there, and the name of the
5 boss over there is Chan Gung, and the boss called.

6 Q. Who was calling you?

7 A. The boss lady.

8 Q. Do you know the lady boss is in this courtroom?

9 A. The boss lady is sitting right there, yes.

10 Q. Is that the lady made the phone call to you to invite you
11 to work in the restaurant?

12 A. Yes.

13 Q. OK. What kind of discussion did you have? On the phone?

14 A. Yes. Over the phone. And the boss lady told me that it's
15 going to be full-time work.

16 Q. Did you discuss how much money you are going to get paid,
17 how frequently you are going to get paid?

18 A. Well, I have been doing this kind of work before, and I
19 kind of know how much these type of work would pay. And she
20 does offer a relatively higher base pay, and I would be paid
21 \$1200 per month. And at that time most other work offer about
22 \$850, and she offered \$1200.

23 Q. When did she offer you \$1200 per month?

24 (Question translated)

25 (Answer not translated)

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Wang - direct

1 Q. On the phone?

2 A. No, not at that time.

3 Well, I mentioned this before. I used to work at
4 Ninth Avenue. I kind of know how much it pays, this type of
5 work, even though it's not a written -- anything written. It's
6 not a written rule or anything.

7 Q. OK. So you did not discuss the pay on the phone? You
8 discussed the pay after you came to the job. Am I right?

9 A. No. I started working and I was given 1200.

10 Q. OK. How often you get paid?

11 A. Once a month.

12 Q. What is the regular day you are going to get your pay?

13 A. The end of the month.

14 Q. OK.

15 A. The end of the month.

16 Q. Did you have meals while you were working in the --

17 THE INTERPRETER: I'm sorry, can I have that one more
18 time?

19 MR. TROY: Did you have meals?

20 THE INTERPRETER: OK.

21 A. No, basically no. Every day I worked side work for them.

22 Q. I don't think you got my question. I'm asking you, did you
23 eat at the restaurant?

24 A. I did.

25 Q. How many meals did you have per day?

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Wang - direct

1 A. Well, lunch and then a simple dinner, just porridge and
2 there's no meal per day for dinner, just porridge.

3 Q. Did you have a fixed time for meals, lunch or dinner?

4 A. No.

5 Q. OK. How much time did you use to eat your meals during
6 your working day?

7 A. Well, no set time. I mean, I often get interrupted, I go
8 deliver, and I finish the meal when I come back.

9 Q. OK. But tell us how much time you need to finish your
10 meals.

11 A. I only needed ten-plus minutes to eat my meal.

12 Q. OK. What kind of duties did you have when you were working
13 in the restaurant Fresco Tortillas?

14 A. I cut the vegetables when I get into the restaurant in the
15 morning.

16 Q. And then?

17 A. I cut scallions, I cut vegetables.

18 Q. Onions or scallions?

19 A. Onions.

20 Q. OK. And what is the next?

21 A. Tomato.

22 Q. How do you deal with the tomatoes?

23 A. I have to cut the tomato into tiny cubes.

24 Q. How about the onion?

25 A. I peel the skin of the onion.

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Wang - direct

1 Q. That is all you did with the onion?

2 A. And then I cut them into strips.

3 Q. OK. What else?

4 A. And containers. I have to clean the metal containers of
5 the restaurant that contain food.

6 Q. All those jobs is before your first delivery or during your
7 deliveries?

8 A. Well, I have to make deliveries if there's an order and
9 come back to continue until it's done.

10 Q. OK. And what else did you do?

11 A. Avocado.

12 THE COURT: Counsel, I hope we are not going to go
13 through every vegetable. I think we get the point on that one.

14 MR. TROY: Thank you, your Honor. OK.

15 Q. You are talking about avocado?

16 A. Yes, I have to peel the avocado and then make them into
17 salsa consistency, pulpy consistency.

18 Q. Do you have any break during the day? Do you have any
19 break hours during the day?

20 A. I do not.

21 Q. Not at all?

22 A. No set break time. No set break time.

23 Q. Did the restaurant close during the day, especially in the
24 afternoon?

25 A. No, no. As a matter of fact, after 3 o'clock, when it

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Wang - direct

1 slowed down, we have to sit there and peel garlic.

2 Q. OK. You are talking about you get \$1200 in the beginning
3 of your working there. Who pays you?

4 A. The boss lady, the lady boss.

5 Q. When you get paid, do you sign any paper?

6 A. No. Not necessary.

7 Q. Did they pay you cash or did they pay you check?

8 A. Cash.

9 Q. During your work at Fresco Tortillas, how many workers are
10 there in the restaurant?

11 A. Well, not including her family, then three.

12 Q. OK. How many workers in their family working in the
13 restaurant?

14 A. When I went there, the husband and wife and their eldest
15 daughter.

16 Q. Every employee come to work every day at 11, just like you?

17 A. The other employees, they could leave at 10, because the
18 boss takes over after that to pick up the phone, for example.

19 Q. During your work at Fresco Tortillas, did you see any labor
20 law poster like minimum wage overtime pay poster on the wall?

21 A. No, no.

22 Q. Not at all?

23 A. No, not at all.

24 Q. During your work for the Fresco Tortillas, did you sign any
25 paper in writing related to your employment?

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Wang - direct

1 A. No. No, not at all. No.

2 Q. When you made deliveries for the Fresco Tortillas, did you
3 get tips?

4 A. Yes, yes.

5 Q. Would you like to tell us roughly how much tips you can get
6 every day?

7 A. Between 40 and 50. About \$50.

8 Q. What kind of bicycle you used to make the deliveries?

9 A. An e-bike.

10 Q. How much money to purchase for the e-bike?

11 A. Over 1400.

12 Q. OK. What is the lifespan for the E bike to use as a
13 delivery?

14 A. Well, let alone the life span, I want to talk about the
15 maintenance. Every month basically I have to maintain and
16 repair the e-bike.

17 Q. OK. Roughly how much maintenance do you have to pay for
18 the bicycle?

19 A. Under normal circumstances, I would say about a hundred per
20 month.

21 Q. OK. Did you change the battery for the e-bicycle?

22 A. Well, all together I believe I changed four batteries while
23 working -- during the time period that I was working there.

24 Q. How much does a battery cost you, roughly?

25 A. Four fifty each.

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Wang - direct

1 Q. OK. When is the time you did not work at Fresco Tortillas
2 anymore?

3 A. March 2016.

4 Q. Do you have a specific day?

5 A. Beginning of March. I think maybe even March 1.

6 Q. OK.

7 A. The very first day I stopped, right around there.

8 Q. Why you stop to work at Fresco Tortillas? Did you get
9 fired?

10 A. No, I quit.

11 Q. Why? Why did you quit?

12 A. Well, because I had been working there for a long time, and
13 I feel there was something being unfair. All the deliveries
14 with the good tips, the boss took them all for himself. And I
15 had a discussion or actually an argument after I worked there
16 for about three years with the boss.

17 So, for me, I always trusted the boss lady. Even
18 today, I trust the boss lady. And there were lots of people
19 who had worked as delivery persons over there, and generally
20 the general consensus is not so good regarding the boss over
21 there.

22 Q. Why?

23 A. Well, for example, if the delivery person are making
24 deliveries and there's another order that comes in, the boss
25 they would take that, including the tips if they are a good

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Wang - direct

1 tipper.

2 So, after three years, I discussed this with the boss
3 lady. So I had the discussion with the boss lady because I
4 thought the boss lady would be fair, plus the fact that I was
5 recruited by the boss lady, so I respect the boss lady a lot.

6 But ultimately I said to the boss lady, Well, you
7 know, the way that the boss works, don't blame me if something
8 happens in the future. Don't blame me.

9 Q. What are you --

10 A. Something extreme happened, don't blame me.

11 Q. What do you mean?

12 A. That I hope that the boss would control himself. It
13 happened already on several occasions. If it happens again,
14 what he did, taking away, you know, the good tipper, I might
15 have to go to court on that.

16 Q. OK. During your employment with the restaurant have your
17 pay changed?

18 A. Yes. After about a year plus that I work there, I was
19 given 1300.

20 Q. OK. Let's talk about the deliveries.

21 A. OK.

22 Q. How many orders always you or with other deliverymen can do
23 a day?

24 A. Generally, I always have about 40 deliveries.

25 Q. Only for yourself or together?

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Wang - direct

1 A. That's just for myself.

2 Q. How many deliverymen when you are working with the
3 restaurant the restaurant has?

4 A. Other than myself, there's one other person.

5 Q. Do you know who is the other person?

6 A. OK. Right now, that would be Mr. Shen. Mr. Shen that is
7 sitting right there.

8 Q. OK. Mr. Shen come after you come to the restaurant,
9 correct?

10 A. Yes. After two years, after I worked there for two years,
11 yes.

12 Q. OK. Before Mr. Shen come to the delivery job, did you work
13 with anybody?

14 A. Yes.

15 Q. Who is the person?

16 A. Well, they have a lot of people in and out all the time. I
17 only remember two of them, but even the two I don't remember
18 their full name. However, one was a Fuzhounese person whose
19 last name is perhaps called Pan.

20 Q. P-a-n?

21 A. Pan, yes. And then the other person is a Shanghainese
22 person, Mr. Chan.

23 Q. Mr. Pan or Mr. Chan, did they work full time or did they
24 work part-time?

25 A. They were all full-timers.

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Wang - direct

1 Q. OK. Do you know when Mr. Shen left the job?

2 A. Approximately January 2016.

3 Q. Did you do deliveries after Mr. Shen left the job?

4 A. Yes.

5 Q. Did you have any partners after Mr. Shen left the job?

6 Another deliveryman?

7 A. Well, they did hire some, a few. However, they did not
8 stay long. We are talking about a day or two. Before I even
9 become familiar with these people, they were gone.

10 Q. Would you like to tell us how much money always it's
11 costing for each delivery order?

12 (Question interpreted)

13 MR. TROY: No. How much is the food cost, each order
14 cost.

15 THE INTERPRETER: Oh, OK. OK.

16 A. For the 40 deliveries that I made, on average I would say
17 each delivery's worth is about \$18.

18 Q. Would you like to tell us what is the least money you make
19 the delivery order?

20 A. So the smallest food delivery I make sometimes could be \$5
21 or so.

22 Q. What is the most money you can deliver in your experience,
23 the most money you can get for each delivery?

24 (Question interpreted)

25 MR. TROY: No. Maybe I need to rephrase that one.

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Wang - direct

1 THE INTERPRETER: OK.

2 Q. In your experience, what cost the most for each order ever?

3 THE INTERPRETER: OK.

4 A. The most expensive delivery that I ever made was about
5 \$500. That one time.

6 Q. OK. Do you know how many eat-ins for the restaurant,
7 roughly every day?

8 A. Per day, my rough calculation, maybe about 20 or so per
9 day.

10 Q. How do you know?

11 A. Because I'm there every day. I'm in and out very quickly,
12 and I make my deliveries very fast.

13 Q. Do you know how much money it cost average for each eat-in?

14 It's more expensive or more cheap?

15 A. On average I would say eat-in, each is about \$13, \$14.

16 Q. OK. Do you know how many pickups or takeouts the
17 restaurant have every day?

18 A. Pickup each day I would say on average about 50 orders come
19 to pick up, always, each day.

20 Q. Do you know how much it cost usually for each order?

21 A. Similar to the deliveries that I make, about \$18, \$19 per
22 order.

23 MR. TROY: Your Honor, I have my direct.

24 THE COURT: OK. Thank you.

25 MR. TROY: Thank you.

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Wang - cross

1 Cross-examination?

2 MR. FREDERICKS: Yes, your Honor.

3 Your Honor, I apologize. We spoke about this during
4 our last appearance, about providing you with the transcript of
5 Mr. Wang.

6 May I approach?

7 THE COURT: Yes, please.

8 MR. FREDERICKS: Thank you.

9 MR. TROY: Mr. Fredericks, can I have a copy?

10 MR. FREDERICKS: Yes.

11 MR. TROY: Thank you.

12 CROSS EXAMINATION

13 BY MR. FREDERICKS:

14 Q. Mr. Wang, you testified that there were approximately 20
15 dining patrons at the restaurant per day, is that correct?

16 MR. TROY: You are talking about 20 or 200?

17 MR. FREDERICKS: 20.

18 MR. TROY: 20, OK.

19 Q. Is that correct?

20 A. Correct.

21 Q. And you testified that the amount of each dine-in bill was
22 approximately \$13 to \$14, is that correct?

23 A. Yes. Correct.

24 Q. Mr. Wang, I'm going to refer to your deposition testimony,
25 which was taken on July 3, 2017.

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Wang - cross

1 I'm specifically referring to page 54, lines 23 to
2 page 55, line 4.

3 Sir, at your deposition, my question to you was:
4 "Q. And on average how much would a typical dine-in customer
5 spend?"

6 And your answer was: "I don't know because I never
7 seen the -- the receipts or anything."

8 And then my follow-up question was: "So you don't
9 know?"

10 And your answer was: "I don't know."

11 So, sir, you clearly testified at your deposition that
12 you don't know the specific amount of money spent on each
13 dine-in order.

14 Can you please explain to me why today you
15 specifically remember that each dine-in order cost
16 approximately \$13 or \$14.

17 A. I didn't say I didn't know. I might have said that I
18 didn't remember clearly.

19 Q. Your actual testimony was that you don't know.

20 So then my follow-up question, sir, is how come you
21 didn't remember clearly at your deposition, but you remember
22 clearly today?

23 A. Well, first of all, I have never been -- stepped foot in a
24 courthouse or legal situation before, as a background.

25 So, even today, anytime I come into -- anytime I come

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Wang - cross

1 into a courthouse, I get nervous.

2 Q. Right. Sir, so that doesn't answer my question.

3 At your deposition testimony -- at your deposition
4 your testimony was that you were unaware or do not know the
5 amount of each specific bill for dine-in patrons.

6 Now, today, you are testifying in the court that each
7 bill was \$13 or \$14. So I would like you to explain this
8 discrepancy.

9 A. Well, I already explained just now. I did say -- I believe
10 I said I couldn't remember clearly, and when I got home, when I
11 returned home I racked my brain and tried to recall, tried to
12 remember every single detail.

13 Q. And when you racked your brain and tried to remember every
14 single detail, what did you recall?

15 A. So I remember, I mean, all the deliveries that I made, for
16 example, I'm not saying each single order is \$18 precisely.
17 And, as I mentioned before, there were \$5 deliveries; there
18 were \$35 deliveries.

19 So I'm just giving an average, a general description.

20 THE COURT: Counsel, the Court recognizes that the
21 witness did not answer the question you asked and also
22 understands the point you have made.

23 MR. FREDERICKS: Yes, your Honor.

24 THE COURT: You can move on from that.

25 MR. FREDERICKS: Thank you.

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Wang - cross

1 BY MR. FREDERICKS:

2 Q. Mr. Wang, you also testified there were approximately 50
3 pickup orders at the restaurant per day, is that correct?

4 A. Yes.

5 Q. OK. So the total number of pickup and dine-in orders at
6 the restaurant on any particular day would be approximately 70,
7 is that correct?

8 A. Not including the deliveries that I made, yes, about 70.

9 Q. That's correct?

10 A. 70.

11 Q. 70?

12 A. That's right. Not including the deliveries, yes.

13 Q. Sir, I'm going to refer to your deposition testimony again,
14 page 54, beginning on line 10, where the question was: "Well,
15 about how many people dine in on average, on an average day?"

16 And your answer was: "I'm not sure this is a hundred
17 percent correct, but I think the takeout orders and eat-in,
18 dine-in -- dine-in customers average would be more than a
19 hundred."

20 And the follow-up question was: "Takeout orders, plus
21 dine-in customers were more than a hundred per day, is that
22 correct?"

23 And your answer was: "Yes, more than. Yeah. All
24 together, it would -- would be -- would be more than a
25 hundred."

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Wang - cross

1 A. Yes.

2 Q. So, sir, I would like you to explain why today you have
3 testified there are a total of 70, approximately 70 dine-in and
4 pickup orders at the restaurant, yet during your deposition you
5 testified that there were over 100 dine-in and pickup orders
6 per day.

7 A. The hundred is not wrong. Including takeout, dine-in,
8 delivery, over a hundred. Am I wrong?

9 Q. Sir, during your deposition you were referring specifically
10 to dine-in and takeout orders only, and you testified that
11 there were over a hundred of those total orders, excluding your
12 delivery orders.

13 THE COURT: Is there a question?

14 BY MR. FREDERICKS:

15 Q. The follow-up question is -- is my original question, which
16 is why are you testifying today that there are only 70 total
17 dine-in and pickup orders on a daily basis?

18 MR. TROY: Objection, your Honor.

19 I believe that counsel, he's just talking about
20 exclusive and only eat-in and the pickup. I don't see any
21 "exclusive" or "only" word on the transcript at all.

22 THE COURT: OK. I certainly can read the transcript,
23 and I see what it says. And I agree the words "only" and
24 "exclusive" aren't there, but there's also no mention of
25 delivery in the context of those particular questions.

I4jnshe

Wang - cross

1 On the other hand, I am not sure this particular
2 discrepancy, while I see it, necessarily helps the defense for
3 the point that they're ultimately going to make, but I leave
4 that to you.

5 Q. So, the follow-up question, sir, is why is your testimony
6 different today than when you testified at your deposition?

7 A. How could it be different?

8 Q. Sir, out of the delivery orders, the delivery orders are
9 placed in a variety of manners, correct?

10 MR. TROY: Objection.

11 Q. Meaning --

12 MR. TROY: Objection, your Honor.

13 I don't think he liked answer. I believe he answered
14 you, and you repeated your question. He answered, when he
15 answered more than a hundred, that's including --

16 MR. FREDERICKS: This is an entirely different
17 question.

18 THE COURT: Objection overruled. The question was
19 about the manner in which people placed orders.

20 MR. FREDERICKS: Correct.

21 A. Telephone, pickup, dine-in.

22 Q. Sir, for the actual deliveries that you made, not speaking
23 of dine-in and pickup orders, for the deliveries that you
24 actually made, how were those orders placed? Meaning were they
25 placed over the computer?

I4jnshe

Wang - cross

1 A. Telephone, cash, computer. And the Internet or computer
2 orders are relatively small, or the smallest.

3 Q. When you say relatively small, what numbers are you
4 specifically referring to, the amount of computer orders?

5 A. I don't remember exactly.

6 Q. Sir, I am going to refer to your deposition testimony, page
7 19, line 12.

8 A. I only care about how many orders I have per day.

9 Q. Right. OK.

10 Sir, so let's go to your deposition testimony, page
11 19, line 12.

12 The question was, "So what percentage of the orders
13 were placed by the computer?

14 "A. Not that many --"

15 THE INTERPRETER: Counsel.

16 MR. FREDERICKS: Sorry.

17 THE INTERPRETER: Yeah.

18 THE COURT: Let's go in segments so we make it easier
19 for the interpreter.

20 THE INTERPRETER: Because you are reading from a
21 transcript. I don't have a copy of the transcript, so you have
22 to slow down.

23 MR. FREDERICKS: I see.

24 Q. So the question was again: "So what percentage of the
25 orders were placed by the computer?"

I4jnshe

Wang - cross

1 And your answer was, "Not that many."

2 And then the question was: "Approximately how many?"

3 And your answer was: "Generally like ten something,
4 ten something orders, maybe the most will be 20."

5 So, sir, is that an accurate statement, that there are
6 10 to 20 Internet orders placed per day that you physically
7 delivered on a daily basis?

8 A. Well, I already told you just now that there's less
9 internet orders than cash. There's more cash orders.

10 Q. Right. But --

11 A. I only care how many I make -- how many deliveries I make.
12 I don't really care how many Internet, how many pickup, how
13 many through the phone or cash order.

14 Q. Sir --

15 A. That's not what my focus is.

16 Q. Isn't it an accurate statement that there are approximately
17 10 to 20 Internet orders that you did personally, personally
18 delivered that were placed per day?

19 A. Should be, yes.

20 Q. Are you aware of what websites were used to place these
21 Internet orders?

22 A. That I don't really know. I'm not terribly familiar with
23 computer or that aspect. I don't really know.

24 Q. Fine.

25 Your recollection, what percentage of the Internet

I4jnshe

Wang - cross

1 orders were paid for by credit card as opposed to cash?

2 MR. TROY: Objection.

3 I don't think that your question is correct. The
4 computer order is only credit card charge.

5 Am I right?

6 MR. FREDERICKS: I am asking if that is his testimony.
7 That is my question.

8 MR. TROY: So I object to your question. Your
9 question doesn't make sense, because your question asks the
10 computer orders. You know, what is the pay by check? What is
11 the pay by cash? My answer to you is all the computer orders
12 is paid by check -- paid by credit card.

13 THE COURT: OK, gentlemen.

14 Ask your question again.

15 I want to hear it.

16 MR. FREDERICKS: OK.

17 BY MR. FREDERICKS:

18 Q. Out of the Internet orders that were placed for your
19 deliveries, what percentage of those orders were paid for by
20 credit card?

21 A. I don't understand.

22 Well, when I received the order, the price is already
23 on it, and there is a receipt if it's a credit card takeout,
24 delivery order.

25 Q. And for all of the Internet orders was there a receipt

I4jnshe

Wang - cross

1 showing a credit card payment?

2 THE COURT: Can you just hold on.

3 THE INTERPRETER: I just asked him to repeat. I
4 didn't catch what he said.

5 THE COURT: If you need him to go slower and in
6 smaller segments, tell him to do so.

7 THE INTERPRETER: OK.

8 A. If it is an Internet order what's been ordered, the amount
9 is already printed on it, on the printout. They already pay
10 through the Internet company. The payment is already paid.

11 Q. All right. OK.

12 A. And I only care how much the order is because that's
13 related to the tips that I might get after I make the delivery.

14 Q. Sir --

15 A. So why I pay attention and know about it, because
16 sometimes, for example, if it's a \$35 Internet order, I make
17 the delivery and only got a dollar tip, I would then say wow
18 that is a terrible tipper, bad order.

19 Q. Right. Sir, you testified that you earned a base salary of
20 \$1200 per month that was subsequently increased to \$1300 a
21 month. Is that correct?

22 A. Yes.

23 Q. Sir, do you have any documents reflecting the salary you
24 earned during your employment?

25 A. No. Can I say something? Whether it's Chinese food,

I4jnshe

Wang - redirect

1 whether it's Mexican food the restaurants that were opened by
2 the Fuzhounese in Manhattan, basically they did not provide
3 any.

4 Q. You don't have any tax returns reflecting the income that
5 you earned at the restaurant?

6 A. Tax return records I do have.

7 Q. And your tax return records reflect the amount of income
8 that you earned at the restaurant; is that correct?

9 A. No. Because the boss would not allow me to report tax, and
10 I only pay just a small, small amount.

11 Q. Well, what's a small amount?

12 A. OK. I meant to say I report 1099. That's what I meant by
13 that.

14 Q. OK. And what small amount did you report on your 1099?

15 A. I reported six to seven thousand dollars. I don't remember
16 exactly.

17 Q. OK.

18 MR. FREDERICKS: Nothing further, your Honor.

19 THE COURT: OK.

20 The witness may step -- oh, any redirect?

21 MR. TROY: Yes, your Honor. Only one.

22 REDIRECT EXAMINATION

23 BY MR. TROY:

24 Q. Just now you are talking about the computer order and
25 another one. I don't think the translation is clear. You are

I4jnshe

Wang - redirect

1 talking about get phone calls. That's a cash order. Am I
2 right?

3 A. Yes.

4 Q. The telephone calls, it's always paid by cash?

5 MR. FREDERICKS: Objection. Leading.

6 THE COURT: Sustained.

7 MR. TROY: Your Honor, it's redirect and according --

8 THE COURT: Sustained. You can still ask the question
9 in a different way.

10 MR. TROY: OK.

11 THE COURT: Hold. On, there was an objection.

12 I sustained it. So he has to ask a new question.

13 THE INTERPRETER: OK.

14 THE COURT: I am not sure what you were just
15 translating, me, or you were translating the question.

16 THE INTERPRETER: I repeated the question.

17 THE COURT: So just tell him there's going to be a new
18 question.

19 THE INTERPRETER: OK.

20 MR. TROY: OK.

21 BY MR. TROY:

22 Q. Would you like to give us an estimate, what is the
23 percentage of the computer orders and what is the percentage of
24 telephone calls orders?

25 THE COURT: Are you asking for pickup and delivery

I4jnshe

Wang - redirect

1 together or only one of those?

2 MR. TROY: Roughly all the deliveries.

3 THE COURT: Just deliveries?

4 MR. TROY: Yes, sure.

5 THE COURT: All right.

6 A. OK. Can I have the question again. I'm not sure -- I am a
7 little confused about the exact percentage that I'm being asked
8 for.

9 Q. OK. Let's put it the easy way. What is the percentage
10 related to the so-called credit card orders and the cash
11 orders?

12 A. I would say cash orders takes up about 60 to 70 percent.

13 MR. TROY: Thank you, your Honor.

14 THE COURT: Thank you.

15 All right. Mr. Wang, thank you.

16 You may step down.

17 (Witness left the stand)

18 THE COURT: Plaintiffs may call their next witness.

19 MR. TROY: Your Honor, can we have a few minutes.

20 THE COURT: A little break?

21 MR. TROY: Yes.

22 THE COURT: Let's take a ten-minute break. We'll be
23 back here at 11:50.

24 MR. TROY: Thank you, your Honor.

25 THE COURT: OK.

I4jnshe

Shen - direct

1 (Recess)

2 THE COURT: All right. Are you ready to proceed?

3 MR. TROY: Yes, your Honor.

4 The plaintiffs call Mr. Shen.

5 JUNMIN SHEN,

6 called as a witness by the Plaintiffs,

7 having been duly sworn, testified as follows:

8 (Through interpreter)

9 DIRECT EXAMINATION

10 BY MR. TROY:

11 Q. Mr. Shen, would you like to state your full name and the
12 address for the record.

13 A. Junmin Shen, 134-30 Maple Avenue, Flushing.

14 Q. OK. Let's talk about Fresco Tortillas.

15 How did you come to know the restaurant?

16 A. I got a phone call from the boss.

17 Q. Do you know the boss before?

18 A. I do, I did.

19 Q. How do you know him?

20 A. In '03, '04, I did work there part-time.

21 Q. OK. So what is the date the boss called you?

22 A. I remember I went back to work August 26, 2014, and the
23 phone call I think he called me maybe a day or two prior to
24 that.

25 Q. What is your conversation during that phone call?

I4jnshe

Shen - direct

1 A. He asked me whether I was working. I said I'm looking for
2 work. He said, well, why don't you come over and work for me.

3 Q. Any other conversation during the phone call?

4 A. No.

5 Q. OK. When is the first day you come to the job?

6 A. August 26 I went to work.

7 Q. OK. During the phone call, did you talk about how you get
8 paid, how much you get paid?

9 A. No, not initially. I didn't ask until the end of the
10 month, after I worked.

11 Q. So what did you ask at the end of the first month you
12 worked for Fresco Tortillas?

13 A. Well, it was only a few days until the end of the month, so
14 I found out that they would pay me \$1100.

15 Q. How often did you get paid during your work for the
16 restaurant?

17 A. Per month.

18 Q. OK. Have you ever been paid weekly, biweekly, or semi
19 months?

20 A. Salary, no.

21 Q. How much did you get paid?

22 A. \$1100 per month.

23 Q. So your pay never got changed during your employment with
24 the restaurant?

25 A. They were changed.

I4jnshe

Shen - direct

1 Q. When did it change?

2 A. About half a year later it was raised to 1200.

3 Q. About six months later from the start of your work or six
4 months before you left the job?

5 A. I started at 1100 and half a year later they told me it's
6 raised to 1200.

7 Q. How many days did you go to work?

8 A. Six days per week.

9 Q. Which day you were off?

10 A. Saturday. I'm off Saturdays.

11 Q. You ever were off not on Saturday?

12 A. No. If there's nothing unusual, I take my day off.

13 Q. OK. What time did you go to work, did you arrive to the
14 work every working day?

15 A. Around 11 basically.

16 Q. OK. What time you left the restaurant, left the job every
17 working day?

18 A. 11. At least 11. Maybe sometimes a little bit earlier,
19 but basically 11.

20 Q. OK. Did you get any break time during the working day?

21 A. Well, basically, if there's an order to deliver, obviously
22 I make that delivery. And if there is no such delivery order,
23 the time would be spent doing side work.

24 Q. OK. What kind of side work did you do?

25 A. Yes. Quite a bit of -- quite a bit -- quite a few things

I4jnshe

Shen - direct

1 to do. Cut tomato, peel onion, cut cabbage, cut cabbage into
2 strips, peel shrimps, quite a few things.

3 Q. OK.

4 A. And garlic, things like that.

5 Q. OK.

6 A. Peel garlic.

7 Q. That's so-called side jobs?

8 A. Yes. And avocados, peel them and pulverize them.

9 Q. Your side job is exactly the same with Mr. Wang, who just
10 testified?

11 A. Yes. The same. Basically --

12 Q. OK.

13 A. -- it is the same.

14 Q. Would you like to tell us roughly how many hours is the
15 side job every working day?

16 A. Two, three hours at a minimum, two three hours per day.

17 Q. OK. And how many meals did you have during your working
18 for the restaurant?

19 A. Mainly just a lunch, 2, 3 o'clock in the afternoon, mainly
20 just a lunch.

21 Q. Do you have a fixed time for the meals?

22 A. No, no, no.

23 Q. How much time it takes to have a meal in the restaurant for
24 you?

25 A. Ten-plus minutes.

I4jnshe

Shen - direct

1 Q. OK.

2 A. Ten-plus minutes, very quickly.

3 Q. What is your pay date?

4 A. Usually the end of the month.

5 Q. OK. Who pay you?

6 A. The boss -- I mean, sorry, the lady boss.

7 Q. Did you get paid cash or did you get paid check?

8 A. Cash.

9 Q. OK. What time did you come to the job?

10 A. I arrived at roughly around 11.

11 Q. What time you left the job?

12 A. Basically 11. Sometimes a little bit beyond that.

13 Sometimes a little lit earlier, maybe a few minutes earlier.

14 Q. OK. When the first day you come to the job, did the boss
15 give you any pay notice for you to sign?

16 A. No, no.

17 Q. Have you ever signed any paper during your work with Fresco
18 Tortillas?

19 A. No, no.

20 Q. When you get your pay, did you sign any paper? Did you
21 give any receipt?

22 A. No.

23 Q. During your employment I believe you had two deliverymen,
24 you and Mr. Wang. How do you arrange the tips? How do you
25 arrange the deliveries?

I4jnshe

Shen - direct

1 A. Well, generally independently. In other words, he make the
2 tips on the delivery he makes and vice versa for myself.
3 Except when there is a large order, then it would be equally
4 divided, the tips would be equally divided between the two of
5 us.

6 Q. Are you talking about you share big tips with each other?

7 A. Correct.

8 Q. Just now you are talking about what day you are off every
9 week? Saturday or Sunday?

10 A. I am off on Saturdays.

11 Q. OK. Do you know what day Mr. Wang off?

12 A. Sunday for him.

13 Q. OK. So did you work on Sunday?

14 A. Well, I'm off. That's my freedom to be off on Sunday.

15 Q. So when you work on Saturday, Mr. Wang did not work on,
16 right?

17 A. Yes.

18 Q. OK. So on Saturday, if you get big tipper, you get good
19 tips, big tips, did you share it with anybody?

20 A. No, no, no. I keep it.

21 Q. OK. Vice versa: If Mr. Wang, during that day only
22 Mr. Wang works and he get big tips, did he share with you, if
23 that day you did not work?

24 A. No.

25 THE COURT: I have a question.

I4jnshe

Shen - direct

1 What does he consider big tips that would be shared?
2 What amount?

3 THE WITNESS: When the order is over a hundred, two
4 hundred and up, when the tips is 20 or 20 plus, under those
5 circumstances, we share them.

6 THE COURT: Thank you.

7 BY MR. TROY:

8 Q. Would you like to tell us how much tips you get average
9 every day?

10 A. 40 plus, 50 on average. I would say that's about it.

11 Q. Average how much tips you get per order?

12 A. Hard to say, two dollars, one dollar, less than that, no
13 tips. All kinds of situations.

14 Q. OK. How do you make your deliveries? What kind of
15 transportation instrument do you use?

16 A. An electric bike.

17 Q. Did the restaurant provide the e-bike or you have to buy
18 yourself?

19 A. Not provided by the restaurant. Purchased on my own.

20 Q. Usually how much it cost for an e-bike?

21 A. 1420, 1450. It all depends on quality.

22 Q. Did you pay the maintenance of the e-bike, or the
23 restaurant paid for it?

24 A. We pay. We paid it.

25 Q. Did you change battery when you working for Fresco

I4jnshe

Shen - direct

1 Tortillas?

2 A. Changed on my own.

3 Q. OK. When you get paid every month, did you sign anything?

4 Did you sign a receipt?

5 A. No.

6 Q. OK. How do you leave the job?

7 A. At the end it was not a happy ending.

8 Q. OK.

9 A. I wasn't happy working there.

10 Q. When is the last day you left the job?

11 A. The last day of January of 2016.

12 Q. Would you like to tell why you were not happy with it.

13 A. The boss has got a bad temper, I guess that's the way I put
14 it, and gets angry very often. And the longer it went on, I
15 became -- I didn't like it.

16 Q. Have you ever complained this kind of stuff to the boss or
17 lady boss?

18 A. I have discussed this with the boss lady. And she said
19 that that's his personality; he's not a bad guy however, he's
20 not a bad guy.

21 Q. OK. Roughly, how many orders did you deliver every working
22 day?

23 A. 30, 40. Myself alone, 30, 40.

24 Q. Would you like to estimate what is the price for the
25 orders, for the deliveries?

I4jnshe

Shen - direct

1 A. I would say on average a very general average, 15, 16, 17,
2 18. In general, under 20. So that's the way I put it.

3 Q. OK. Did you get any chance to evaluate how or observe how
4 many eat-ins at the restaurant on every working day you worked?

5 A. Well, you know, other than the fact that I would be out
6 delivering, which makes me unable to observe what was going on,
7 what I could observe, what my estimation each day would be
8 roughly 20 some-odd customers that eat in.

9 Q. What is the price, you think, about the eat-ins, each?

10 A. Well, it varies. A group of two, three, could be eating
11 \$15, \$16, and sometimes one person come in and maybe \$10. Hard
12 to say.

13 Q. OK. Did the restaurant have any pickups?

14 A. Yes.

15 Q. OK. Would you like to tell us in your experience how many
16 orders there are a day?

17 THE INTERPRETER: Pickup?

18 MR. TROY: Yes.

19 A. My estimation, 40, 50 orders.

20 Q. OK.

21 A. Could be more than 50 times.

22 Q. OK. Do you know what is the average price for each order?

23 A. I would say they are roughly equal to the delivery orders,
24 the value in our delivery orders.

25 Q. How many employees during your employment with the

I4jnshe

Shen - cross

1 restaurant the restaurant has?

2 A. Three employees.

3 Q. Three employees. Does that include the boss and the boss
4 lady?

5 They are the boss. I'm right?

6 A. No, including the boss and boss lady, then you have five.

7 Q. OK. Did you ever mention when is the day you left the job?

8 A. Yes. The last day of January of 2016 or January 31, I
9 think.

10 MR. TROY: Your Honor, plaintiff is good with this
11 witness.

12 THE COURT: Thank you. Cross?

13 CROSS EXAMINATION

14 BY MR. FREDERICKS:

15 MR. FREDERICKS: Your Honor, may I approach again.

16 THE COURT: Of course.

17 MR. TROY: Can I get a copy.

18 BY MR. FREDERICKS:

19 Q. Sir, you testified that you earned approximately 40 to 50
20 dollars in tips, is that correct?

21 A. Yes. The majority 50, 50 plus, majority.

22 Q. 50 plus. OK.

23 Sir, I'm going to refer to your July 3, 2017,
24 deposition testimony on page 22, line 9.

25 It indicates, the question is: "On average, how many

I4jnshe

Shen - cross

1 tips -- how much did you earn in tips per day?"

2 And your answer is, "Maybe 50 something, 60 something
3 a day."

4 So my question is, sir, which one is it?

5 Is it 50 to 60 dollars per day, as you testified at
6 your deposition, or 40 to 50, as you're testifying today?

7 A. Well, there is a distinction. I mean, Monday generally is
8 not a good day for tips, so that's why I said 40 to 50 plus.

9 But, in general, Wednesdays, Thursdays, Fridays, the tips are
10 better. So that's why I said majority were 50 plus.

11 Q. Sir, you testified that there were approximately 20 dine-in
12 patrons per day, is that correct?

13 A. Yes.

14 Q. I am going to refer to your deposition testimony, page 24,
15 line 20 to 24:

16 The question is: "I understand, but for the time that
17 you were there what would you estimate the number of dine-in
18 patrons?"

19 And your answer was: "I would say that maybe like 30
20 or 40 receipts."

21 Are there 30 to 40 dine-in receipts per day, or 20
22 dine-in receipts per day, as you are testifying to now?

23 A. Well, let's say Monday, then you, on average, would have a
24 relatively fewer, and then on the weekends then you would have
25 relatively more dine-in.

I4jnshe

Shen - cross

1 Q. Right. So, averaged out on a weekly basis, how many
2 dine-in patrons would you estimate that the restaurant received
3 per day?

4 A. Well, the question -- this question ought to be asked of
5 the boss or the boss lady, because I often make deliveries out
6 there.

7 Q. Well, what percentage of the time would you estimate you
8 spend making deliveries?

9 A. Approximately eight, nine hours.

10 Q. Out of how many hours per day?

11 A. I basically spent eight to nine hours on the road, out
12 there making deliveries.

13 Q. Out of how many hours in a workday?

14 A. 12 hours a day.

15 Q. Now, sir, if you spend approximately 75 percent of your
16 time outside making deliveries, how are you aware of the amount
17 of dine-in and takeout receipts of the restaurant per day?

18 A. Yes. Even though we go in and out making deliveries, but
19 we notice tear-off receipts of orders. That's the stack there.
20 Every time we come in and out, we notice or I notice.

21 Q. Sorry. The stack of tear-off receipts represents what?

22 A. That would represent dine-in, pickup, and also delivery
23 orders that were phoned in, whether they're credit card or some
24 other method. They represent orders.

25 Q. OK.

I4jnshe

Shen - cross

1 MR. TROY: Your Honor, I would like to make one thing
2 clear, because the translation, there was a little bit of
3 difference between the original and one, because --

4 MR. FREDERICKS: Your Honor, plaintiff's counsel is
5 not testifying.

6 MR. TROY: I know. But --

7 THE COURT: But there is a question about the
8 translation.

9 MR. TROY: Yes.

10 Your Honor, I believe he is not talking about on the
11 stack of the receipts the orders include, I don't know, I did
12 not hear he say include the delivery orders.

13 THE COURT: OK.

14 MR. TROY: But the translation was the delivery
15 orders.

16 THE COURT: I actually noticed that the translator was
17 collecting his thoughts.

18 Can you actually ask the question again about what
19 those represent, or if they included delivery receipts?

20 MR. FREDERICKS: Right.

21 BY MR. FREDERICKS:

22 Q. You testified that there was a stack of receipts that
23 allows you to estimate the number of dine-in and takeout
24 deliveries, is that correct?

25 A. Well, the delivery orders that we made includes cash,

I4jnshe

Shen - cross

1 computer, and credit card orders.

2 THE COURT: But of the tear receipts that he would
3 notice in the restaurant, did those include delivery receipts?

4 THE WITNESS: Yes. Cash ones, other than cash, no.

5 MR. FREDERICKS: OK.

6 BY MR. FREDERICKS:

7 Q. Where were the noncash delivery represents located?

8 A. I don't understand the question.

9 Q. All right. You testified that a stack of receipts
10 represents takeout orders, dine-in orders, and also cash
11 delivery receipts, correct?

12 A. Should be included in there.

13 Q. OK. Sir, so my question is, looking at this -- strike
14 that.

15 Where was this stack of receipts located again?

16 A. On the table or on the counter.

17 Q. On the counter where? In what area of the restaurant? The
18 front? The back?

19 A. In the middle, by the cashier machine.

20 Q. By the cashier machine.

21 Sir, did you work as a cashier during your employment
22 there?

23 A. No.

24 Q. So, you were never stationed near the cashier location,
25 correct?

I4jnshe

Shen - cross

1 A. I don't touch that.

2 Q. OK. Sir, how confident are you that you are able to
3 estimate the number of particular receipts by glancing at a
4 stack of papers? Can you explain that to me, please.

5 A. They are the boss. As the employee all I can tell you is
6 that's my estimate.

7 Q. Right. And how confident are you that this is an actual
8 estimate based on glancing at a stack of receipts.

9 A. Well, I get a feeling that business is good, then the stack
10 would be thicker. It would be a thicker stack.

11 Q. Right. And how are you able to estimate the number of
12 receipts generated by the width of the stack?

13 A. I don't have the right to look at it to verify it. It was
14 just out of curiosity I check, I look. However, I can only
15 just tell you that my estimation of the number of deliveries
16 that I make is about 40.

17 Q. And my question is how confident are you that your estimate
18 is accurate out of the number of receipts that are in that
19 stack?

20 A. I can't tell. Maybe half and half.

21 Q. I am going to refer you to page 36 of your deposition, line
22 3 the question: "How are you certain that as you are looking
23 at this that the stack of receipts represents the number of
24 pickup orders?"

25 MR. TROY: Which number?

I4jnshe

Shen - cross

1 MR. FREDERICKS: 36.

2 And the answer is: "It's an estimate. In reality,
3 are there 30 or 40 or 50, it is an estimate number. It's an
4 estimated number. Sometimes we were there, sometimes we -- we
5 were out. So, we -- we really don't know, so it's a rough
6 estimate."

7 So you really didn't know the number of takeout or
8 dine-in receipts on a daily basis, correct?

9 A. Well, it's the boss' business. It's just an estimate,
10 approximate figure.

11 Q. Let's go on to pickup orders. You testified there are
12 approximately 40 to 50 pickup orders or more than 50, correct?

13 A. I said average.

14 Q. 40 to 50, is that correct? Or more than 50 was your
15 testimony, I believe.

16 A. Yes. I also said Monday may be a little bit worse, the
17 weekend a little bit better.

18 Q. I am going to refer you to page 25 of your deposition. I
19 will make this brief. Let me only start at line 2.

20 The question was: "How many takeout customers do you
21 estimate there were per day? How many takeout customers would
22 you estimate there were per day?"

23 And your answer, down at line 11: "It would be,
24 depending on the thickness of the receipts, my estimate would
25 be like, 30, 40 orders a day."

I4jnshe

Shen - cross

1 So is it your testimony that there are 40 --

2 MR. TROY: Your Honor --

3 Q. -- to 50 pickup -- sorry, takeout orders per day, or 30 to
4 40 takeout orders per day?

5 THE COURT: Is there an objection?

6 MR. TROY: Your Honor, relating to the translation, I
7 believe Mr. Fredericks' question is directed to the takeout.
8 That means pickup, not a delivery. But I believe the
9 translation is talking about deliveries. So I believe it's
10 confused.

11 MR. FREDERICKS: He's also testified that there are 40
12 to 50 pickup orders. He testified that he was doing 30 to 40
13 deliveries.

14 THE COURT: Yes. OK.

15 I have down that he testified on direct 40 to 50
16 pickup orders, and you are now trying to point out that at his
17 deposition he said 30 to 40.

18 MR. FREDERICKS: Right.

19 THE COURT: Go ahead.

20 Q. So which one is it, sir?

21 Are there 30 to 40 pickup orders per day or 40 to 50
22 as you testified to today?

23 A. Basically 40 plus, 50. Possibly a little bit less on
24 Monday.

25 Q. Sir, are you currently employed?

I4jnshe

Shen - cross

1 A. Sometimes I work, sometimes I do not work.

2 Q. Where were you employed today?

3 A. I am off these days.

4 Q. OK. You previously worked at a restaurant on 95th Street,
5 a Chinese restaurant on 95th Street, is that correct?

6 A. Yes.

7 Q. So, at that restaurant, the Chinese restaurant on 95th
8 Street, what percentage of the delivery orders placed were paid
9 for by credit card?

10 A. Anything to do with this case?

11 Q. Please answer the question.

12 A. Why? What's the reason?

13 THE COURT: You can tell him that he's not here asking
14 questions. He's here to answer.

15 Please answer the question.

16 MR. FREDERICKS: I don't think it's too intrusive.

17 THE WITNESS: OK.

18 A. What is the question again?

19 Q. At your position as delivery person at a Chinese restaurant
20 located on 95th Street, what percentage of the orders were paid
21 for by credit card?

22 A. A little bit more in credit card in terms of the orders
23 from the computer.

24 Q. When you're saying -- when you're referring to a little bit
25 more, are you in comparison to your deliveries made at Fresco?

I4jnshe

Shen - cross

1 A. What I'm saying is that the shop I worked at at 95th Street
2 had relatively more, more than the cash portion.

3 Q. Right. And when you say "relatively more," what exactly
4 are you referring to? What percentage?

5 A. Cash orders, 30 percent; the rest, 70 percent.

6 Q. 70 percent of the delivery orders would be paid for by
7 credit card, is that correct?

8 A. Well, for example, if there is a hundred orders, 70 would
9 be a credit card order.

10 Q. OK.

11 THE COURT: Counsel, can you just kind of have him
12 clarify which restaurant he's referring to.

13 MR. FREDERICKS: Right.

14 Sorry, your Honor.

15 BY MR. FREDERICKS:

16 Q. And you're referring to the Chinese restaurant at 95th
17 Street, correct?

18 A. Yes.

19 Q. The specific address for that restaurant, are you aware of
20 the cross-street? 95th and what avenue?

21 A. Columbus.

22 Q. 95th Street and Columbus, that's a residential area,
23 correct?

24 A. Should be, yes. Correct.

25 Q. And where is Fresco Tortillas located?

I4jnshe

Shen - cross

1 A. Columbus, 95th Street.

2 Q. No. We are talking about Fresco Tortillas now, for the
3 case you are suing --

4 A. Between 56th and 57th on Tenth Avenue.

5 Q. 56th and Tenth Avenue. That is also a residential area,
6 correct?

7 A. Yes. Majority residential.

8 Q. OK. So what percentage of the patrons of Fresco Tortillas
9 paid for their delivery orders by credit card?

10 A. I don't know. That's the boss's business.

11 Q. Do you have an estimate of what percentage of the delivery
12 orders are paid for by credit card?

13 A. I don't know. That's the boss's business.

14 Q. Sir, I want to refer you to page 40 of your deposition,
15 line 20.

16 This is regarding your employment at Fresco.

17 The answer is: "Perhaps, for example, today I make
18 about 40 deliveries -- sorry, deliveries -- 30 of them are cash
19 payment and maybe five of them are credit card payments, and
20 the other five are computer orders."

21 A. I don't understand what you are saying.

22 Q. Well, sir, during your deposition testimony we discussed
23 the amount of credit card delivery orders, and you testified at
24 your deposition that out of 40 deliveries, 30 of them are cash.

25 But earlier you testified that you were unaware of the

I4jnshe

Shen - cross

1 amount of credit card delivery payments.

2 A. Well, I thought you were asking about the boss. If you ask
3 me, I would answer you.

4 Q. OK. Let's just leave that.

5 You testified that 70 percent of the patrons at the
6 Chinese restaurant on 70 -- is it 75th and Columbus, or 95th
7 and Columbus? Sorry -- paid by credit card.

8 But how come only 25 percent of the patrons of Fresco
9 Tortillas, as you testified at your deposition, paid by credit
10 card?

11 MR. TROY: Objection, your Honor.

12 You know, I believe that is an expert question. It is
13 not our client's knowledge and everything to evaluate each
14 district, if they are residential or they are commercial.

15 THE COURT: Objection overruled.

16 He's given estimates. If he had a basis to give
17 estimates, then he may have a basis to explain the difference.

18 A. I don't know why.

19 MR. FREDERICKS: Nothing further, your Honor.

20 THE COURT: Thank you.

21 Any redirect?

22 MR. TROY: No, your Honor.

23 THE COURT: OK. All right.

24 You may step down Mr. Shen. Thank you.

25 It is now almost 5 minutes to one. We will take a

I4jnshe

Shen - cross

1 lunch break.

2 What do we have in store?

3 Are we going to have two more witnesses in total?

4 MR. FREDERICKS: Correct, yes.

5 THE COURT: OK. So let's resume at 2, and we'll see
6 what we can do in the hour and 45 minutes we have after that.

7 OK.

8 MR. FREDERICKS: Thank you, your Honor.

9 MR. TROY: Thank you, your Honor.

10 THE COURT: Thank you.

11 (Luncheon recess)

I4jnshe

Shen - cross

A F T E R N O O N S E S S I O N

(2:05 p.m.)

THE COURT: Mr. Fredericks, where are your clients?

MR. FREDERICKS: I have the same question, your Honor. They are aware of when they are supposed to be back. I just checked with them. I will check with them again. Unfortunately I don't have my phone. Presumably they are going through security.

THE COURT: The LiveNote isn't working at the moment but everything else is fine. So we are going to start.

Let's see.

Mr. Troy, are you calling another witness?

MR. TROY: Your Honor, I would like to defer to call the defendant on the condition of the defense counsel is going to call his client.

THE COURT: That is fine.

So if you want to conduct direct, there will be cross by Mr. Troy.

MR. FREDERICKS: Sure.

I call Dan Qing Liu, your Honor.

DAN QING LIU,

called as a witness by the Defendants,

having been duly sworn, testified as follows:

(Through interpreter)

I4jnshe2

Lui - direct

1 DIRECT EXAMINATION

2 BY MR. FREDERICKS:

3 Q. Ma'am, please state your name for the record.

4 A. Dan Qing Liu.

5 Q. What is your position at Number One Fresco Tortillas Inc.?

6 A. Well, it's a limited company, so I am managing, the person
7 that's managing.

8 Q. Are you responsible for the tax preparation and submission
9 of the tax returns for the company?

10 A. Mostly that would be myself, yes. Sometimes. My husband
11 does send over to information to the accountant.

12 Q. Well, ma'am, I am going to show you what's been marked as
13 Defendants' Exhibit 1, Bates number D000001.

14 This is your federal income tax return, submitted for
15 the year 2013 in connection with this litigation.

16 Do you recognize this document?

17 MR. TROY: Could I have a copy.

18 MR. FREDERICKS: This was previously produced.

19 MR. TROY: I don't think you produced it to me.

20 THE COURT: No, it was.

21 MR. TROY: Your Honor, I have an objection to it.

22 Regarding to the tax return, I believe the tax return
23 goes to the motion for summary judgment and the motion to
24 dismiss. And the, Judge, number one, since this tax return
25 they did not sign and did not authenticate it, I don't think it

I4jnshe2

Lui - direct

1 is admissible.

2 THE COURT: OK. Well, let's see what's established
3 and lay the appropriate foundation.

4 MR. FREDERICKS: OK.

5 THE COURT: We'll see.

6 BY MR. FREDERICKS:

7 Q. Ma'am, do you recognize this document?

8 A. I recognize it. I have seen it before.

9 Q. I am going to show you what's indicated on line 1A, gross
10 receipts or sales.

11 THE COURT: Before you do that, I would like you to
12 establish -- first of all, what's the last Bates number on that
13 document.

14 The last page is 493?

15 MR. FREDERICKS: The last is --

16 THE COURT: Is it all of Exhibit 1?

17 MR. FREDERICKS: Yes, it is all of Exhibit 1.

18 THE COURT: OK.

19 MR. FREDERICKS: The last page of the returns are 493.

20 MR. TROY: 2013?

21 MR. FREDERICKS: 2013, correct.

22 THE COURT: So this appears to me to be a collection
23 of several documents.

24 MR. FREDERICKS: That's correct.

25 THE COURT: So I think you need to have that

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Lui - direct

1 established with the witness rather than just saying this is
2 one document.

3 If it's a collection of documents, what is that
4 collection, what's in here. Certainly, I will say for the
5 plaintiff on cross, you can certainly establish whether these
6 documents were filed, who signed them, etc. I would think that
7 defense counsel would want to establish some of that as well.

8 But if it turns out that for some reason it can't be
9 authenticated or there is a basis not to admit it, I'll either
10 exclude it or take it for whatever weight it's worth.

11 MR. FREDERICKS: Thank you, your Honor.

12 THE COURT: OK.

13 BY MR. FREDERICKS:

14 Q. Ma'am, I'm going to show you a collection of documents that
15 have been Bates stamped starting from D00000 --

16 THE COURT: I'm sorry, one more thing.

17 For the record, there has been an objection to the
18 admission of Defendants' Exhibit 1, correct?

19 MR. TROY: Yes. Your Honor, but for --

20 THE COURT: OK.

21 MR. TROY: -- for argument purposes --

22 THE COURT: I am reserving judgment on that for the
23 reasons I just said.

24 MR. TROY: Thank you, your Honor.

25 Q. D000001 through D000493.

I4jnshe2

Lui - direct

1 THE COURT: Two requests.

2 One is do you have an exhibit that you can provide the
3 witness, or are you going to have to stay right at the witness
4 box?

5 MR. FREDERICKS: No. I just have the -- I can do
6 this.

7 THE COURT: If you want to read through it, if
8 necessary, we have an extra copy that would allow you to do
9 that. I don't think it is appropriate for you to be standing
10 right there.

11 MR. FREDERICKS: Yes, your Honor. Sorry.

12 THE COURT: We have the extra copy here.

13 MR. FREDERICKS: Let's just do it like that.

14 THE COURT: Also, just raise your voice a little bit.
15 I am having trouble hearing you.

16 MR. FREDERICKS: OK.

17 THE COURT: Thank you.

18 Q. Let the record reflect that I've handed the witness D00001
19 through D000010.

20 Ma'am, do you recognize this document?

21 A. Yes.

22 Q. What is this document?

23 A. Originally, there were Chinese characters written on this
24 page, originally.

25 Q. I'm sorry. Can you explain that?

I4jnshe2

Lui - direct

1 A. I am talking about expenses, gas, rent, electric, phone
2 bills, all that.

3 Q. Ma'am, who prepared this document?

4 A. The accountant office.

5 Q. Do you recall when that specific document was prepared?

6 A. 2013.

7 Q. OK. For that particular document, are you aware of what
8 the gross receipts or sales that the restaurant reported in
9 that particular tax year?

10 THE COURT: Counsel, if you haven't established that
11 this was submitted and that this was the return that was
12 submitted, I don't know if the witness can answer that or not.
13 You can continue.

14 Even if for any reason this exhibit isn't admissible
15 at some point, you can certainly ask what your clients know the
16 receipts to be, and you can still use the document to ask
17 questions.

18 MR. FREDERICKS: OK.

19 THE COURT: It won't necessarily be admitted, but
20 we'll see.

21 MR. FREDERICKS: Right.

22 THE COURT: The pending question is?

23 BY MR. FREDERICKS:

24 Q. I believe the pending question was are you aware of what
25 the gross reported sales of the restaurant were for that

I4jnshe2

Lui - direct

1 particular tax year?

2 A. So, in other words, the entire restaurant for the entire
3 season tax returns or tax reporting? Is that correct?

4 Q. That's correct.

5 A. About -- for the season for each month the reported amount
6 was about 20 something, 20,000 something, 20,000 plus, about
7 24,000.

8 Q. OK. Ma'am, looking at that particular document and
9 referring to the top page, are you aware if this document was
10 submitted to the IRS by your accountant?

11 MR. TROY: Objection, your Honor. I believe defense
12 counsel did not establish from which page to which page for
13 this document.

14 THE COURT: Just to be clear, I think right now we're
15 dealing with only 1 through -- was it 13? What was the number?

16 MR. FREDERICKS: 1 through 10.

17 THE COURT: 1 through 10.

18 A. Yes.

19 Q. OK. How did you obtain a copy of this tax return that you
20 produced in this litigation?

21 A. They kept a copy of the original.

22 THE COURT: Who is that?

23 Q. Who?

24 A. The accounting office.

25 Q. And, ma'am, what records were provided to the accountant

I4jnshe2

Lui - direct

1 office to prepare this particular return?

2 MR. TROY: Objection, your Honor. It's leading.

3 THE COURT: I think it's what documents were provided,
4 which is not a leading question. Overruled.

5 A. All the statements from Internet or computer sales, credit
6 card monthly statements, and daily cash receipts as well.

7 Q. OK. Anything else?

8 A. There are no other incomes.

9 Q. OK.

10 MR. FREDERICKS: Your Honor, may I approach the
11 witness again?

12 THE COURT: Sure.

13 BY MR. FREDERICKS:

14 Q. Ma'am, I'm going to show you what's been marked as D000011
15 through D000018. Do you recognize this document?

16 A. Yes.

17 Q. What document? What is it?

18 A. Also, tax return for 2014.

19 Q. Are you aware of what the gross reported receipts were for
20 Fresco Tortillas for tax year 2014?

21 A. Well, yes, I do know. And the business fluctuates,
22 sometimes less, sometimes a little bit more.

23 Q. Who prepared this document?

24 A. Also by the same accounting office.

25 Q. Are you aware if this particular tax return was submitted

I4jnshe2

Lui - direct

1 to the IRS?

2 A. Yes.

3 Q. How did you obtain a copy of this tax return for tax year
4 2014?

5 A. Every month, every season -- sorry, every season I sent
6 over the check for making tax payments. So, also, in the same
7 way I requested that they made a copy of the original form that
8 they prepare.

9 Q. OK. And did you provide any records to the accountant who
10 prepared this tax return?

11 A. I did.

12 Q. What records did you provide?

13 A. Yes. Similar to the other one, I submitted receipts, costs
14 for gas, garbage, rent, food cost, receipts for all the costs.

15 Q. Ma'am, I'm going to show you what's been marked as D000460
16 through D000467.

17 Ma'am, do you recognize that document?

18 A. I have.

19 Q. What is that document?

20 A. Also a tax return for 2015.

21 Q. Is that a true and accurate reflection of the gross
22 receipts or sales reported to the IRS for that tax year?

23 A. Yes.

24 Q. Was this particular tax return submitted to the IRS?

25 A. Yes.

I4jnshe2

Lui - direct

1 Q. Who prepared this document?

2 A. By the same accounting office.

3 Q. How did you obtain a copy of this document?

4 A. Same thing. Made a request that they make copies of the
5 original and provide that to us.

6 Q. What documents, if any, did you provide in the preparation
7 of this tax return?

8 A. Also normal business expenses, costs, repairs, maintenance,
9 monthly rent, gas, all the normal costs. So definitely, we --
10 that had to be paid. That had to be paid.

11 Q. Does Fresco Tortilla maintain a corporate bank account?

12 A. Yes.

13 Q. Who do they maintain a bank account with? Which bank?

14 A. Citibank.

15 MR. FREDERICKS: Your Honor, may I approach the
16 witness?

17 THE COURT: Yes.

18 MR. FREDERICKS: I'm going to give her what's D2.
19 It's Bates number D000377.

20 THE COURT: You are giving her the first page?

21 MR. FREDERICKS: That's correct, your Honor.

22 MR. TROY: What is the document name?

23 MR. FREDERICKS: 377.

24 MR. TROY: No. You gave us Exhibit -- which one?

25 MR. FREDERICKS: D2.

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Lui - direct

1 MR. TROY: D2?

2 MR. FREDERICKS: D2.

3 MR. TROY: You needed to give me a copy. You are at a
4 hearing with your exhibit. You have to give me a copy of the
5 exhibit.

6 MR. FREDERICKS: This was previously produced in the
7 course of this litigation.

8 THE COURT: Well --

9 MR. TROY: No, I'm talking about the trial.

10 THE COURT: Hold on.

11 The exhibits were disclosed in a pretrial order as
12 well, i.e., as to exactly what would be used as an exhibit.
13 But it is customary that an attorney using an exhibit would
14 have a copy for their adversary in the event that their
15 adversary isn't prepared with their own.

16 Why don't we do what we did before. I am going to ask
17 my clerk to provide Mr. Troy with the exhibit or maybe even the
18 exhibit notebooks, since it looks like this is going to be an
19 ongoing issue.

20 MR. FREDERICKS: It looks like there's two exhibits.

21 BY MR. FREDERICKS:

22 Q. Ma'am, do you recognize this document?

23 A. I have.

24 Q. What is this document?

25 A. A bank statement of the restaurant.

I4jnshe2

Lui - direct

1 Q. Are you aware of what the monthly deposits were for the
2 restaurant on that particular statement month?

3 A. Well, I know roughly how much it was because it included
4 three checks from the Internet sales, three separate checks
5 from the Internet sales.

6 Q. So the deposited amount that's reflected on that statement,
7 what does that number consist of? What revenue that is earned
8 by the restaurant?

9 A. Credit card income and income from online orders.

10 Q. Anything else?

11 A. Nothing else.

12 Q. Ma'am, one final exhibit. I am going to approach with
13 what's been marked as D000389.

14 MR. TROY: What is the number? 389?

15 MR. FREDERICKS: 389?

16 MR. TROY: OK.

17 Q. Ma'am, do you recognize this document?

18 A. Yes.

19 Q. What is this document?

20 A. Another bank statement.

21 Q. Are you aware of what the restaurant's gross deposits were
22 in that particular month?

23 A. Every month approximately about 10,000 plus, a little bit
24 more than 10,000 was deposited. Also it depends on the
25 business.

I4jnshe2

Lui - direct

1 Q. And the number that's reflected in the amount that's been
2 deposited, what revenue does that consist of?

3 THE COURT: Where is that number?

4 MR. FREDERICKS: It should be right on the front page.
5 It may be easier --

6 THE COURT: What is the figure that you are referring
7 to in terms of the actual --

8 MR. FREDERICKS: I believe it's 19,606.09.

9 THE COURT: That is an average daily collected balance
10 according to this.

11 MR. FREDERICKS: Right.

12 So that would be what's collected on an a monthly
13 basis.

14 THE COURT: I'm sorry. I am still not understanding.
15 It says average daily collected balance. So isn't that the
16 average amount on any given day in the account? I would think
17 you would have to add up all the credits, and there may be
18 credits for other things that aren't related.

19 MR. FREDERICKS: Right.

20 THE COURT: But that's speculation on my part.

21 MR. FREDERICKS: I believe that if you --

22 THE COURT: On 390, the following page, I see at the
23 bottom are the credits a total of 19,269.48.

24 But, A, that is an assumption on my part that those
25 are all deposits; and, B, I don't know if any of the credits

I4jnshe2

Lui - direct

1 are things unrelated to receipts from the restaurant.

2 I just point it out because I don't think we are
3 operating on the right information.

4 MR. FREDERICKS: Right. My apologies.

5 To the extent we can establish that these records
6 accurately reflect what is being deposited and what sort of
7 revenue has been deposited into the corporate account, we can
8 credibly show the amount of money that they're actually taking
9 in.

10 THE COURT: I understand the purpose you want to use
11 it for. I'm saying that it's not clear what these numbers
12 actually represent.

13 MR. FREDERICKS: Right.

14 THE COURT: I am not saying that is a basis to keep
15 out the statements. I'm saying when you were asking about the
16 deposit number, I don't see any number here that is a single
17 deposit number.

18 MR. FREDERICKS: I understand, your Honor. My
19 apologies. I believe I may have just misread the statement.

20 THE COURT: All right.

21 MR. FREDERICKS: I can continue on or --

22 THE COURT: Well, let me ask, since this seems to be
23 coming up.

24 I assumed that when the exhibit list was provided to
25 me these were all exhibits for which there were no objections

I4jnshe2

Lui - direct

1 because none were indicated as something to be dealt with.

2 I will leave it to you gentlemen to say, are you
3 agreeing that all the exhibits that you have each listed and
4 provided to me, are you going to stipulate that they are
5 admitted into evidence, or am I going to be ruling on each one?

6 MR. TROY: Your Honor, can we do the cross-exam.

7 THE COURT: Yes. I just raised that --

8 MR. TROY: I believe if we can start on these and then
9 we do the cross-exam for the tax return and the bank deposit, I
10 believe that should be more convenient for everybody.

11 THE COURT: We don't need to deal with it now. I just
12 raise it because it appears to be an issue that is unresolved.

13 Go ahead.

14 MR. FREDERICKS: I will move on.

15 THE COURT: I will put it this way. I will reserve at
16 the moment judgment on the admissibility of all the exhibits
17 since this is apparently an issue. You certainly can ask about
18 these documents if you want.

19 MR. FREDERICKS: Right. I believe that the documents
20 somewhat speak for themselves. It is just that they are spoken
21 in an incorrect manner.

22 I will continue.

23 BY MR. FREDERICKS:

24 Q. The cash that was received by the restaurant as revenue,
25 how was that cash distributed or allocated?

I4jnshe2

Lui - direct

1 A. Some portion of the supply of the restaurant has to be paid
2 by cash as well as every night the tips from the online orders
3 and credit card tips was also required by us to be paid in the
4 form of cash.

5 THE COURT: I'm sorry. I don't want counsel to in any
6 way to be misled by what I said, because I do see a line on
7 that statement that says deposit, but then there are a lot of
8 other lines that say electronic credit.

9 So if you wanted to ask your question previously about
10 that particular line on page 390.

11 MR. FREDERICKS: No. That's fine, your Honor.

12 THE COURT: OK.

13 MR. FREDERICKS: I think I have provided -- the
14 statements themselves should establish a sufficient foundation.

15 THE COURT: I apologize.

16 MR. FREDERICKS: No, no, no.

17 THE COURT: Go ahead.

18 BY MR. FREDERICKS:

19 Q. Outside of supplies and tips from online orders, is the
20 cash that is received from -- is the cash revenue distributed
21 in any other manner?

22 A. Yes. Used to pay their salary.

23 Q. OK. Now, on a typical month, of the cash that's used to
24 pay for supplies, tips from online orders and the employee
25 salaries, is there excess cash remaining?

I4jnshe2

Lui - direct

1 A. No. As a matter of fact, sometimes I have to withdraw some
2 money, cash from the account.

3 Q. What are the typical monthly costs for the supplies that
4 you need to purchase in cash?

5 A. Well, one of them was for 1,000 or so. The other one was
6 for about two, three thousand.

7 Q. And what supplies were those specifically?

8 A. Snapple, sodas, chicken meat, taco chips, vegetables and
9 meat.

10 Q. You also indicated that you used some of the cash to pay
11 employees. During the times that plaintiffs were employed by
12 the restaurant, what employees were paid in cash?

13 A. Both of them, the two delivery persons.

14 Q. Did you compensate your daughter for her services at the
15 restaurant?

16 A. Well, if you are talking about 2015, my daughter did not
17 work there that year. So, that year, no, she did not work
18 there.

19 Q. So during the time of plaintiffs' employment with the
20 restaurant, how many employees were paid in cash at any one
21 given time?

22 A. The cashier.

23 Q. OK. And what was the cashier's salary on a monthly basis
24 during plaintiffs' employment?

25 A. Two to three thousand.

I4jnshe2

Lui - direct

1 Q. OK. What percentage -- strike that.

2 Ma'am, you indicated that the bank statements
3 reflected the credit card receipts generated by the restaurant.
4 What percentage of the restaurant's total sales were paid for
5 by credit card?

6 A. 75 percent, a huge percentage.

7 Q. Breaking down each specific category of revenue, what
8 percentage of deliveries were typically paid for by credit
9 card?

10 A. High also.

11 Q. When you say high, what number are you referring to, as an
12 estimate?

13 A. Also high, 70 percent, 80 percent on some nights. When you
14 deduct that, there isn't much left, not much money left.

15 Q. Ma'am, for pickup orders, what percentage of the patrons
16 paid via credit card?

17 A. That would be slightly lower.

18 Q. When you say slightly lower, what percentage lower, as an
19 estimate?

20 A. About half.

21 Q. And for the dine-in customers, what percentage of those
22 patrons paid for their meals via credit card?

23 A. Also on the lower side. The reason is we have a minimum
24 requirement, minimum charge for credit card.

25 Q. What is the minimum charge?

I4jnshe2

Lui - direct

1 A. (In English) \$8.

2 Q. And the typical cost for the meal of a single dine-in
3 patron?

4 A. Chicken quesadilla or combo, so on average about \$8.

5 Q. Ma'am, are you aware of what the total square footage of
6 the restaurant is?

7 A. Not very big, because we are just really a takeout delivery
8 restaurant and fresh food -- and fast food, fast food.

9 Q. How many seats are available for eat-in patrons?

10 A. Under ten.

11 Q. How many tables are available for the eat-in patrons?

12 A. Two tables that allows eight people, and then two counter
13 space that allow two people to eat standing, or counter.

14 Q. So each table allows for four people?

15 A. So, ten in total, two tables that allow eight diners, four
16 each, and two counter spaces.

17 Q. What is the square footage of the actual kitchen area?

18 A. I am not exactly sure, but in total maybe the square
19 footage, maybe 900, and the kitchen maybe 50. Yes, the
20 kitchen.

21 Q. In square feet?

22 A. Yes.

23 Q. So how many people can the kitchen physically hold?

24 A. Not very big; two, three people.

25 Q. And what is your monthly rent?

I4jnshe2

Liu - cross

1 A. \$5,000 plus.

2 Q. In your experience a \$5,000-plus lease, is that on the
3 lower or the higher end for a Manhattan restaurant?

4 A. I would say that's a very, very good price. I consider
5 myself very lucky that I got a very good offer from the
6 landlord.

7 THE COURT: I just have one question on that same
8 line.

9 How many people are cooking in the kitchen at any one
10 time?

11 THE WITNESS: Maximum three. That would be my
12 husband, the cashier -- at the highest or the busiest point in
13 the kitchen, maximum three, maybe even packing in there,
14 something like that.

15 THE COURT: OK.

16 MR. FREDERICKS: Nothing further, your Honor.

17 THE COURT: OK.

18 Cross?

19 MR. TROY: Yes, your Honor.

20 CROSS EXAMINATION

21 BY MR. TROY:

22 Q. Just now, Miss, you are talking about the cash expenses.
23 We did not quite get it. I would like to get the details. OK?

24 Before I ask you, would you like to tell us how much
25 roughly each month you can get in cash in the restaurant?

I4jnshe2

Liu - cross

1 A. Several thousand dollars. It varies, it depends. I would
2 say four, five, six thousand, depending on business.

3 Q. OK. So your cash expenses how much total?

4 A. Salaries, some restaurant supply by cash, because some
5 restaurant supplies we have to pay in check.

6 Q. How much is the restaurant supplies you have to pay cash?

7 A. Not a lot. Maybe every week two, three hundred, including
8 paying for chips.

9 Q. What is the total cash you have to pay each month, roughly?

10 A. Approximately five, six thousand.

11 Q. How about only just what you are talking about that is more
12 than that. Let's talk about the cashier, how much you pay. I
13 believe she was paid, you are talking about two thousand to
14 three thousand how much she got paid?

15 A. 2500, yes.

16 Q. OK. That's 2500.

17 How much do you have to pay to the deliverymen?

18 A. 2,000 plus. 2500 together. 2500.

19 Q. And just now you are talking about you spend \$1,000 for the
20 materials. So how much is that? \$1,000?

21 A. Yes, approximately.

22 Q. So how much is that one right now?

23 A. Sometimes they take checks. Sometimes they don't. They
24 take cash only.

25 Q. OK. That's \$6,000.

I4jnshe2

Liu - cross

1 Let's talk about -- you are talking about the tips
2 from credit card or online. How much money do they get in tips
3 each month, one?

4 How much is the tips for each deliveryman per month?

5 THE COURT: I'm sorry. I don't know if you were
6 purposely trying to ask a different question or not. First, I
7 heard a question about tips received on credit card and online,
8 and then I didn't hear an answer, and then now you asked about
9 tips on deliveries.

10 MR. TROY: No. Tips from the online and credit cards.

11 THE COURT: OK.

12 MR. TROY: Because she's talking about at the end of
13 the day they got to give the cash, they have to count the
14 credit card and online tips and then give them the cash.

15 THE COURT: I just wanted to understand which tips we
16 are talking about, where they're coming from. OK.

17 BY MR. TROY:

18 Q. Is it fair to say every one is more than 1100? Each
19 deliveryman.

20 THE COURT: Each deliveryman?

21 BY MR. TROY:

22 Q. Gets more than \$1100 per month for only online or credit
23 card tips. Yes or no?

24 A. In terms of the online order and credit card cards who
25 actually pay cash tips, we would not know how much that would

I4jnshe2

Liu - cross

1 be. They keep it and don't tell us.

2 Q. My question would only be directed to tips generated online
3 and the credit card charges.

4 A. There are a few tens.

5 Q. Per day?

6 A. Yeah.

7 Q. Would you like to tell us how much it is? What do you mean
8 a few tens?

9 A. What can be seen is several tens of dollars.

10 Q. Is that 50? 70? 90? Which one?

11 A. About 50, 60.

12 Q. OK. Per day?

13 A. Approximately, yes.

14 Q. OK. So how many days the delivery person work per month?
15 Average is 26 days? I'm right?

16 A. No. Not 26 days. Sometimes.

17 Q. OK. How many days do they work a week? How many days?

18 A. Six days. Sometimes they did not work so many hours.

19 Q. I am talking about how many days. If they worked 26
20 days -- we won't take 60. Let's take 50. That's 1300 for
21 each. So two are named. That's 26. So until now we have cash
22 expenses for 8600.

23 THE COURT: Can I interrupt you.

24 I want to make sure I heard it correctly.

25 The witness said about 50 to 60 dollars a day in tips

I4jnshe2

Liu - cross

1 from credit card and online that were paid to the delivery --

2 MR. TROY: Every day.

3 THE COURT: -- people, split between two of them?

4 MR. TROY: No.

5 THE COURT: OK.

6 A. Yes. However, they are not always together in the same
7 weekend. So they don't overlap on some weeks.

8 Q. OK. Let's go back to the basics.

9 THE COURT: I need to interrupt you, because I have
10 one more question.

11 So those tips would be in addition to tips that they
12 received when they made a delivery? Is that the idea?

13 MR. TROY: When they get their cash tips, they just
14 keep it.

15 THE COURT: Right.

16 MR. TROY: OK.

17 THE COURT: So this is on top of that.

18 MR. TROY: Yes. This is from the credit card and the
19 one.

20 THE COURT: Got it.

21 BY MR. TROY:

22 Q. Miss, let's go back to square one.

23 Did you get any -- the restaurant ever hire Mr. Wang
24 and Mr. Shen?

25 A. Yes.

I4jnshe2

Liu - cross

1 Q. When is the first time you hired Mr. Wang?

2 A. Initially, he only came to work one day a week.

3 Q. When?

4 A. Several years ago, or many years ago. 2012, I believe.

5 That's when he started doing one day a week of work.

6 Q. When did you hire Mr. Wang full time?

7 A. I think 2015.

8 Q. How many days Mr. Wang work for you per week?

9 MR. FREDERICKS: I will just object to this line of
10 questioning. It is outside the scope of direct.

11 THE COURT: I will allow it.

12 A. Six days a week he works.

13 Q. OK. During what period?

14 A. 2015.

15 Q. He worked six days?

16 A. The second half of the year.

17 Q. OK. And how many hours he worked per day?

18 A. Eight hours.

19 Q. And from what time to what time?

20 A. Sometimes lunch hour, sometimes dinner hours.

21 Q. But it's the same only five hours? Is that five hours
22 total?

23 MR. FREDERICKS: Objection. That misstates the
24 testimony.

25 THE COURT: Agreed.

I4jnshe2

Liu - cross

1 A. No. Eight hours.

2 Q. Eight hours for Mr. Wang, right?

3 A. Well, eight hours includes lunch hours and/or break time.

4 Q. What is the time for his break hour?

5 A. 3 o'clock, 4 o'clock. 3 o'clock is lunch time, and 3
6 o'clock, 4 o'clock, that's break time.

7 Q. What time he start work?

8 A. Sometimes morning shift, sometimes in the afternoon shift.

9 Q. So, if he worked for the early shift, did he get a break?

10 If he get a later shift, did he get a break?

11 A. Well, if the late shift is not busy, then, yes, there are
12 break times.

13 Q. Do you have fixed time for the break?

14 A. 3 to 4 o'clock together with the meal. So that's the time
15 period. That's the time.

16 Q. Let me show you the Defendants' Exhibit -- you are talking
17 about later in 2015 our client working for eight hours, and
18 then they work for six days.

19 THE COURT: Your Honor, may I show defendant D000342,
20 348, 357, and then 375.

21 Are these selected pages of Defendants' Exhibit C?

22 MR. TROY: Your Honor, actually, that's from
23 plaintiffs' exhibit, but defendants' exhibit is a little bit --
24 I believe that's Exhibit 2, and at the end of Exhibit 2 we have
25 four pages.

I4jnshe2

Liu - cross

1 MR. FREDERICKS: What are the Bates numbers again?

2 MR. TROY: OK. Let me give you --

3 THE COURT: So this is Plaintiffs' Exhibit 2, pages
4 342, 348, 357 and 375.

5 MR. TROY: You have the paper? Would you like to tell
6 us how many days he worked according to your records?

7 Can I give you this one instead of mine.

8 That's the same one.

9 Q. So how many days he work per week?

10 THE COURT: Well, counsel, are you asking for those
11 particular months or every month of the year?

12 MR. TROY: Your Honor, we are talking about July and
13 August --

14 THE COURT: OK.

15 MR. TROY: -- and September, and then I only have
16 December.

17 THE COURT: OK.

18 BY MR. TROY:

19 Q. First, may I ask you the question, who make this record?
20 Did you do it or your husband do it?

21 A. My husband did.

22 Q. OK. Thank you. Let me have this one.

23 Let's come back. You are talking about the cash
24 expenses. I'm right?

25 First, let's talk about cash income. Let's go to the

I4jnshe2

Liu - cross

1 exhibit just now Mr. Fredericks showed you, I believe that's
2 the 377, D000377.

3 THE COURT: This is from Defendant's Exhibit 2, the
4 Citibank statement?

5 MR. TROY: Yeah. That's 2000 -- OK.

6 Q. You have this one?

7 A. I have it.

8 Q. You have that one. OK. Very good.

9 For these months would you like to tell me, where is
10 the deposit you deposited the cash into the bank?

11 Which entry is the cash income you deposit?

12 MR. FREDERICKS: I just object. It assumes facts not
13 in evidence.

14 THE COURT: Overruled. You can seek further
15 clarification if you need to on redirect.

16 A. No cash deposit because --

17 Q. Just --

18 A. No cash deposit, there's no cash to make the deposit.
19 Sometimes I need to withdraw from the account.

20 Q. So you are talking about when you get cash from your
21 business you did not deposit it to the bank, or you did not
22 have any official record to reflect that's your income? I'm
23 right?

24 A. Well, sometimes. Sometimes when there is some cash I would
25 make deposits.

I4jnshe2

Liu - cross

1 Q. OK. Let's make the question clear. When you get the cash
2 income, you just try to disburse all the expenses without any
3 record, but if you don't have enough cash to pay the expenses,
4 you withdraw from the bank account. But if you have some
5 remaining money after you pay all the expenses of the month,
6 then you deposit into the bank account? I'm right?

7 A. Yes.

8 Q. Would you like to point out you able to deposit cash into
9 your bank account? I am talking about through all the exhibits
10 defense counsel present regarding to the bank statements. Do
11 you have any entry, cash deposit entry?

12 A. Definitely deposit was made. However, it may not be on
13 these two because over here you have -- over here, this
14 statement is very limited because they only show 10 days, 13
15 days. That's not enough. That's limited.

16 Q. Let me give you --

17 THE COURT: I'm sorry. Let's just clarify.

18 Page 377 is the first page of a multipage statement.
19 The second page has the rest of the month. I don't know if the
20 witness has both or not.

21 MR. TROY: OK.

22 BY MR. TROY:

23 Q. May I present you all the bank statements from 000377 to
24 000459. I believe that's from 2015, July 7, to the month of --
25 let me give you that one and then let's see whether it's the

I4jnshe2

Liu - cross

1 last one. That's 2016, October 6.

2 May I present you this one. I am talking about from
3 here to here.

4 Would you like to tell me which entry is the cash
5 deposits.

6 THE COURT: Counsel, you are just asking from the
7 first entry or from every one?

8 MR. TROY: Every one. Because I don't think we have
9 because --

10 Q. OK. Forget every page. How about those two where your
11 attorney was talking. Come to the exhibit.

12 A. Well, I know -- well, if you are talking about these two,
13 well, yes, yes, yes. Whenever I have cash, I make deposits. I
14 make deposits.

15 Q. But you cannot point out for those two months even your
16 attorney used as exhibits? I'm right, some of those exhibits?

17 So is it fair to say you run another bookkeeping for
18 cash somewhere without reflect to your official corporation
19 account?

20 MR. FREDERICKS: Objection.

21 THE COURT: I will allow it.

22 But you have asked if there is actually another
23 bookkeeping, as if there was another set of records. I don't
24 know if you're asking that or something else. You may want to
25 clarify your question.

I4jnshe2

Liu - cross

1 MR. TROY: OK. Thank you.

2 A. No, I don't keep another book. There isn't that much money
3 to do that. Each day maybe I get a hundred or so dollars left
4 that I keep.

5 Q. After expenses, cash expenses?

6 A. It is not like this every day. I don't take every day in
7 cash. And online orders payment by check happen only once a
8 month. And a lot of times we were waiting for that to pay
9 expenses.

10 Q. OK. It's fair to say you admit maybe the bank statement
11 did not reflect the difference of the cash the restaurant
12 generate in the amount of at least the expenses in the amount
13 of \$8600 of the cash expenses? I'm right?

14 THE INTERPRETER: I'm sorry. Can I have the question
15 back one more time. I didn't catch the question.

16 THE COURT: The interpreter didn't get the question.

17 MR. TROY: Would you like to read it please.

18 THE COURT: Yes.

19 (Record read)

20 A. What was the cash expense again? Amount?

21 Q. At least \$8600. We counted, right? Yes or no?

22 A. As a matter of fact, as I mentioned before, I sometimes
23 have to wait for payment to come in to pay my expenses.

24 THE COURT: Counsel, I understand this point.

25 MR. TROY: OK.

I4jnshe2

Liu - cross

1 THE COURT: But I do have a question about the bank
2 statement, if I may?

3 MR. TROY: Sure.

4 THE COURT: On page 377, do you have that?

5 THE WITNESS: Yes.

6 THE COURT: OK. There is an entry, the third line,
7 the third date down, that says 07/08.

8 Then it says deposit. Do you know what that deposit
9 represents, what that means?

10 MR. TROY: That is a credit card or that's the online?
11 A. This is a check amount. This is the check payment from
12 online.

13 THE COURT: Thank you.

14 MR. TROY: OK.

15 Q. Let's come back to the tax return, before we go for tax
16 return. In 2013, how many employees you have? Forget that.
17 How about 2015?

18 A. About four or five sometimes. You can see in the records.

19 Q. OK. I believe you testified, a lot of people testified in
20 2015 you hired our client Wang, you hired our client Shen, and
21 then you have cashier named Jessica, and you are paying her
22 \$2500 per month. I'm right?

23 And you talk about, you pay to our clients it's around
24 \$2500 per month at the same time. I'm right?

25 A. Yes.

I4jnshe2

Liu - cross

1 Q. So how much did that total?

2 A. \$5,000.

3 Q. OK. \$5,000 per month. What is the yearly? How much do
4 you pay over the year? Is that \$60,000? I'm right?

5 A. Approximately, yes.

6 Q. OK. Let's go back to the tax return, 1120, that's
7 D000460. That's return of 2015.

8 OK. Would you like to tell us the line 13, name,
9 salary, and wage -- how much does your tax reflect the wage or
10 salary for the whole year?

11 A. Well, they did not work there for the full year, for that
12 year. And everybody -- and sometimes they don't even work
13 there for one day, and they move around very often, work here
14 today, work there tomorrow, vice versa. (In English) And maybe
15 they take some time, they want to go and take a break for the
16 vacation time, you know.

17 THE COURT: Counsel, about how much longer do you
18 have. We have ten minutes until I need to break for the day?

19 MR. TROY: Your Honor, I'll try to finish in ten
20 minutes.

21 THE COURT: OK.

22 MR. TROY: I'm trying to temporarily finish for the
23 day to go.

24 BY MR. TROY:

25 Q. Let me give you the exhibit. Maybe you don't need me to

I4jnshe2

Liu - cross

1 give it to you, that's D000124 and D000375. I believe that's a
2 the whole year's of 2015 by you to Wang, Mr. Wang.

3 Did he work for you every month of the 2015? Yes or
4 no?

5 A. For 2015. I asked him to report tax. He refused.

6 Q. My question is, did he work for you the whole year?

7 A. No.

8 Q. No?

9 A. No.

10 Q. Which months he did not work for you?

11 A. Part-time.

12 Q. No. How much did he get paid? He get paid \$1300 basically
13 per month? I'm right? And, your record, it doesn't show that
14 way? I am talking about D000124. That's 2015, the whole year.
15 Right?

16 A. Well, 1300 per month is correct. It's not inaccurate. It
17 was agreed full time, \$1300 base salary.

18 Q. OK.

19 A. But that doesn't mean he did in fact work full time all the
20 time.

21 Q. OK. How much you pay him the whole year for the part-time?

22 A. (In English) Per day, per hour, maybe per week. It
23 depends. It's different you know.

24 Q. Totally per year. So, I'm talking about total year 2015.
25 How much did he get in money from the total year?

I4jnshe2

Liu - cross

1 A. I only pay him salary and some of the tips, so I have no
2 idea. I really don't know exactly how much he's making.

3 Q. I'm asking the base pay, how much you pay yearly in 2015.

4 A. Base salary is 1200, 1300, as agreed. However, there are
5 day rates, day pay.

6 Q. OK.

7 A. That depends -- or weekly pay. So that depends on that
8 time period. He would be paid by the day, by the hour, or
9 perhaps by the week.

10 Q. OK. You want to go, let's go. That's D000124, in 2015,
11 March.

12 A. Say again? Where is that page?

13 Q. Let me give you this one. Oh, I can give you here. OK. I
14 will help you to this one. OK.

15 THE COURT: Which month are we looking at?

16 MR. TROY: March.

17 THE COURT: March 2015, right?

18 MR. TROY: Yes.

19 BY MR. TROY:

20 Q. How much did he get paid?

21 A. (In English) Like a short time, you know, not like -- you
22 know, part-time, not like full time.

23 (Through interpreter) Not like full-time only
24 part-time, didn't do the full-time.

25 (In English) How much money we pay, we do that very

I4jnshe2

Liu - cross

1 fair. If they don't like it, maybe one day they want to fight
2 it for me, they come, you know.

3 Q. Miss, this is the document that your attorney presented to
4 us. That's monthly employees time sheet.

5 A. Uh-huh.

6 Q. You claim he worked from 6 to 10:30. So how many hours did
7 he work? Even we challenge this authenticity. You know we
8 don't think this is truth, but for argument purposes, how much
9 money you pay for him according to this record?

10 A. (In English) It's true. This is like a per month, per
11 week, per hour, per month. Averaging \$13,000 -- 36, let me
12 pull up how many hours, one hour, how much the money. They
13 know. They knew how much an hour.

14 Q. How much you pay him in March 2015?

15 A. (In English) March 15 he only working a couple of days.
16 They gone, you know.

17 Q. Are you telling me --

18 THE COURT: Wait. What did she say.

19 A. (In English) 2015, they gone. In --

20 MR. TROY: Your Honor, we request to read the back.

21 Maybe that's easier.

22 THE COURT: Well, I want to ask the witness.

23 Do you see at the bottom where there is a line that
24 says "Total Pay"?

25 THE WITNESS: Yes.

I4jnshe2

Liu - cross

1 THE COURT: And there's an entry that indicates 891.

2 Is that what he was paid for the hours he worked that
3 month according to this sheet?

4 THE WITNESS: Yes.

5 MR. TROY: OK.

6 THE COURT: And does the total under the column that
7 says tips, according to this sheet, represent the amount of
8 tips that he received for that month?

9 THE WITNESS: Yes.

10 THE COURT: And who prepares these time sheets?

11 THE WITNESS: My husband did.

12 BY MR. TROY:

13 Q. On behalf of the corporation, your husband do this monthly
14 employees time sheet? I'm right?

15 A. Yes.

16 Q. OK. So, according to this one, Mr. Wang get about 17,
17 maybe around 18 hundred on the month? I'm right?

18 A. Yes. Yes.

19 Q. How about April? Is this the one?

20 A. Approximately that's the number. However --

21 THE WITNESS: (In English) OK. By the way, I need to
22 say something, OK.

23 THE COURT: There's not a question pending.

24 BY MR. TROY:

25 Q. So in March how much is it?

I4jnshe2

Liu - cross

1 A. Is that March or May?

2 Q. May.

3 A. Uh-huh, approximately that amount.

4 Q. Thank you.

5 So it's fair to say Mr. Wang gets more than 1700 per
6 month?

7 A. Not including the cash tips. More than 1700, not including
8 cash tips.

9 Q. So how about the base pay?

10 A. Well, wasn't base pay already paid for. How many hours
11 like -- that's his base salary, how many hours. How much was
12 paid that's base pay, no.

13 Q. OK. Let's come back.

14 Just now you testified Mr. Wang and Mr. Shen both are
15 making a base pay about 1300. Two of them, that's 2600.

16 The cashier, Jessica, got 2500.

17 So, add them all up, it's about 5,000 a month.

18 If they work full time for a whole year, it's going to
19 be 60,000 per year.

20 Let's talk about the tax return of 2015. OK?

21 A. Hold on.

22 Q. The tax return --

23 A. Hold on, hold on. In New York everybody agrees the salary
24 amount in the restaurants.

25 Q. So you are talking about the pay of the employees time

I4jnshe2

Liu - cross

1 sheet doesn't reflect the hours both plaintiffs really worked
2 in hours? I'm right?

3 A. They do.

4 THE COURT: Mr. Troy, you have one minute.

5 MR. TROY: Your Honor, I will just try to finish in
6 one minute.

7 THE COURT: Please.

8 Q. OK. Let's go to Exhibit D000460, line 13.

9 What is the number? Line 13.

10 A. I know.

11 Q. What is the number?

12 A. Well, over here, right? 21,151.

13 Q. OK. So it's fair to say you downsized the salary and the
14 wages of the employees from at least 60,000 to 21,000. I'm
15 right?

16 A. No.

17 Q. OK. And why Jessica was paid 2500 and both of our clients
18 they are paid 12 or 13 hundred each per month, and then it's
19 going to generate becoming 21,000?

20 A. Well, I already mentioned this before, that the two of
21 them, on the surface it's not that amount because they
22 didn't -- they were paid on a day or a week sometimes basis.

23 Q. It's fair to say the salary and wage 21,000 doesn't reflect
24 the true number of wages and salary you paid to all the
25 employees in 2015?

I4jnshe2

Liu - cross

1 A. Yes. Jessica sometimes take off.

2 MR. TROY: Your Honor, we'll continue tomorrow?

3 THE COURT: Yes.

4 MR. TROY: Thank you.

5 THE COURT: Are you not done with your cross?

6 MR. TROY: Not yet, your Honor.

7 THE COURT: OK.

8 All right. We will continue tomorrow morning at 9:30.

9 This witness is on cross-examination, so defense
10 counsel is directed not to discuss her testimony either as it
11 has come forth or as it is expected to come forth.

12 Any questions or any applications?

13 The witness may step down.

14 THE WITNESS: OK. Thank you.

15 THE COURT: Mr. Troy, anything to discuss?

16 MR. TROY: Your Honor, regarding to the amended
17 caption, I believe defense counsel already consents, so we will
18 file, if the Court approves, for the change of the caption.

19 THE COURT: OK.

20 MR. TROY: That is all we have.

21 THE COURT: I appreciate the consent.

22 Anything from the defendants?

23 MR. FREDERICKS: No, your Honor.

24 THE COURT: Thank you. I will see you all at 9:30.

25 (Adjourned to April 20, 2018 at 9:30 a.m.)

I4jnshe2

Liu - cross

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